778.

SUPREME COURT OF THE UNITED STATES.

No. 96.

JACOB SWEEPTZER, PLAINTIFF IN ERROR,

vs.

WILLIAM H. GAINES AND MARIA GAINES, HIS WIFE, FORMERLY MARIA BELDING, HENRY BELDING, ALBERT BELDING, AND GEORGE BELDING, HEIRS OF LUDOVICUS BELDING, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

INDEX.

	Original.	Print.
Transcript of record from circuit court	1	1
Declaration	1	1
Writ and sheriff's return	3	2
Commission to special judge	4	3
Amended declaration	6	4
Judgment of circuit court	8	5
Bill of exceptions	9	6
Appeal prayed and granted	15	11
Security for costs	16	11
Proceedings in supreme court	17	11
Assignment of errors	17	11
Joinder in errors	17	12
Judgment of supreme court	18	13
Writ of error	19	13
Bond to prosecute writ of error	20	14
Clerk's certificate	21	14

GIDEON, print.

State of Arkansas.—In the Supreme

Be it remembered, that at a supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the 6th day, being the first Monday in July, A. D. 1857, were the following proceedings, before the Hon. Christopher C. Scott and Hon. Thomas B. Hanly, judges, on the 1st day of August of said term, viz:

JACOB SWEIPTZER, Appellant, vs. WILLIAM H. GAINES, and MARIA, his wife, Albert Belding, Henry Belding, and George Belding, Appellees.	Appeal from Hot Spring Circuit Court.

Be it remembered, that heretofore, to wit, on the 15th day June, A. D. 1856, the said appellants filed in the office of the clerk of said supreme court the transcript of the record on appeal, which is in the following words:

Trans. of Ct. Ct.

STATE OF ARKANSAS,
County of Hot Spring, ss.

In the Hot Spring circuit court, to the August term thereof, A. D. 1855, William H. Gaines, and Maria, his wife, formerly Belding, Albert Belding, and Henry Belding, and George Belding, by attorney, complain of Jacob Sweiptzer, defendant.

Declaration.

For said plaintiffs declare and say, that heretofore, to wit, on the 20th day of December, A. D. 1851, at the county aforesaid, they the said plaintiffs were lawfully entitled to the possession of certain premises, with the appurtenances, situate in said county of Hot Spring, and within the jurisdiction of this court, to wit: a certain tract or parcel of land known and described upon the plats of the public surveys as the southwest quarter of section thirty-three, in township two south, of range nineteen west, containing one hundred and sixty acres, together with the buildings, houses, improvements, privileges, appurtenances, and rights thereunto appertaining and belonging; and said plaintiffs being so entitled to the possession thereof, the said defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, entered into the possession and ejected the said plaintiffs therefrom, and unlawfully withholds from said plaintiffs the possession thereof.

2. And the said plaintiffs further declare and say that heretofore, to wit, on the 20th day of December, A. D. 1851, at the

county aforesaid, they the said plaintiffs were lawfully entitled to the possession of certain other premises and messuages, with the appurtenances, situate in said county of Hot Spring, and described as all that part of a certain claim, tract, or parcel of land designated on the public surveys as the northwest quarter of section thirty-three, in township two south, of range nineteen west, which is included in a certain lot or enclosure lying and being on the left-hand side of the road going and leading through the Hot Spring valley, in a southern direction, to the Washita river, and which lot adjoins, on its upper or northern side, the lot or enclosure occupied by Olney Macklin and Samuel Macklin, and the property on the southern or lower side thereof being vacant or unenclosed.

And said plaintiffs being so entitled to the possession thereof, the said defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, entered into the said premises and messuages, and ejected the said plaintiffs therefrom, and unlawfully withholds from said plaintiffs the possession thereof.

Wherefore the said plaintiffs say they are injured, and have sustained damages to the sum of one thousand dollars, and therefore they bring their suit, &c.

WATKINS & GALLAGHER, *Att'y.*

(*Endorsements:*)

No. 157.—William H. Gaines, and Maria, his wife, Albert Belding, and Henry Belding, and Geo. Belding, vs. Jacob Sweiptzer—Ejectment. Declaration. Filed July 26th, 1855. Jno. P. Emerson, clerk.

STATE OF ARKANSAS,
County of Hot Spring, ss.

The State of Arkansas to the Sheriff of the county of Hot Spring, greeting:

You are hereby commanded to summon Jacob Sweiptzer, if he be found within your bailiwick, to appear before the judge of our circuit court of Hot Spring county, at the court-house in the county aforesaid, on the first day of our next August term, at a court to be holden on the last Monday of August next, then and there to answer William H. Gaines and Maria Gaines, his wife, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, of a plea of ejectment, to damage of said plaintiffs one thousand dollars, and that you make due return of this writ to our said court.

In testimony whereof I have hereunto set my hand as clerk of said circuit court, and affixed the seal of office this 26th [L. S.] day of July, 1855, and of the independence the year.

JNO. P. EMERSON, *Clerk.*

(*Endorsements:*)

157.—Wm. H. Gaines vs. Jacob Sweiptzer—Ejectment. Writ. Sheriff's fees, $1 88. Returned and filed August 13, 1855. Jno. P. Emerson, clerk.

I do hereby certify that I executed the within upon the within named Jacob Sweiptzer, in Hot Spring county, by reading the contents in his presence and hearing this 27th day of July, 1855.

JOSEPH JESTER, *Sheriff.*

THE STATE OF ARKANSAS,
County of Hot Spring.

At a circuit court begun and held in and for the county of Hot Spring, in the State of Arkansas, at the court-house in the town of Rockport, on the last Monday of August, in the year of our Lord one thousand eight hundred and fifty-five, being the twenty-seventh day of said month. Present and presiding the Honorable Theodoric F. Sorrells, judge of the second judicial circuit of said State, judge.

Proceedings had on Tuesday, August 28th, 1855, it being subsequent day of said term.

Absent, the Honorable Theodoric F. Sorrells, judge.

Present and presiding, the Honorable John C. Murray, special judge.

Special Judge's Commission.

It is ordered that the commission of the special judge be spread on the records of the court, which is accordingly done, as follows:

The State of Arkansas to all to whom these presents shall come, greeting:

Know ye, that, reposing special trust and confidence in the ability, honesty, and law knowledge of John C. Murray, and by virtue of the authority in me vested, by an act of the general assembly of the State of Arkansas, entitled "An act making appropriations for the years eighteen hundred and fifty-five, eighteen hundred and fifty-six, and part of the year eighteen hundred and fifty-four, and for the balance due from the State," approved January 12th, 1855, I, Elias N. Conway, governor of the State of Arkansas, do hereby appoint and commission him, the said John C. Murray, special judge of the circuit court, to adjudicate, try, and determine certain causes pending in the circuit court in Hot Spring county, in the second judicial circuit in the State of Arkansas, from adjudicating which causes, T. F. Sorrells, judge of the second judicial circuit of said State, certified to me that he is disqualified by law; which causes are entitled as follows, to wit: W. H. Gaines, and Maria, his wife, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, by his guardian, vs. Henry M. Rector and William Stedham; same vs. John

C. Hale; same vs. James Sumpter; same vs. Harrison D. Flowers; same vs. Richard Puckett; same vs. Patrick Burke; same vs. Loretta Hunter; same vs. Edmund Mills; same vs. Jacob W. Parker; same vs. Abraham Kempum. He, the said John C. Murray, is therefore hereby authorized to do and perform all and singular the duties incumbent on him, as special judge of the circuit court for the trial and determination of the causes aforesaid, according to law, and the trust reposed in him.

In testimony whereof, I have hereunto set my hand, and caused the seal of the State of Arkansas to be affixed at Little [L. S.] Rock, this 15th day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the 80th year.

ELIAS N. CONWAY.

By the Governor:

D. B. GREER, *Secretary of State.*
By RICHARD H. JOHNSON,
Deputy Secretary of State.

Proceedings had on Friday, August 31st, 1855.

Friday, August 31st, A. D. 1855. Court met pursuant to adjournment; present and presiding, the Honorable Theodoric F. Sorrels, judge.

WM. H. GAINES, and MARIA, his wife, Albert Belding, Henry Belding, and George Belding, his *his* next friend, } Ejectment.
vs.
JACOB SWEEPTZER.

Came the plaintiffs by attorney, and on leave asked and obtained, and, by consent of parties, amended their declaration in this behalf, so that the said George Belding may appear and sue by attorney, instead of his next friend, it being represented and shown to the court, that before the commencement of this suit, the said George had attained full age, and of which the counsel framing the declaration were not apprized.

Ordered that this suit be continued.

THE STATE OF ARKANSAS,
County of Hot Spring.

At a circuit court begun and holden in and for the county of Hot Spring, in the State of Arkansas, at the court-house in the town of Rockport, on the last Monday of February, in the year of our Lord eighteen hundred and fifty-six, being the twenty-fifth day of said month.

Present and presiding, the Honorable Theodoric F. Sorrels, judge of the second judicial circuit of said State, judge.

Proceedings had on Wednesday, February 27th, 1856.

Absent, the Honorable Theodoric F. Sorrells, judge. Present, the Honorable John C. Murray, special judge.

WM. H. GAINES, and MARIA, his wife, Albert Belding, Henry Belding, and George Belding,
vs.
GEORGE SWEIPTZER.
} 157—Ejectment.

Came the plaintiffs by attorney, and the defendant was solemnly called but came not, and made default.

Therefore it is by the court considered that said plaintiffs recover against said defendant the property in the declaration specified, together with such damages as they have sustained; but because it is not known to the court the amount of damages they have sustained, on motion it is ordered that a writ of inquiry be awarded.

Proceedings had afterwards on Wednesday, February 27, 1856.

WILLIAM H. GAINES et. al.
vs.
JACOB SWEIPTZER.
} 157.

Came the said complainants and defendant by their respective attorneys, and by consent the judgment of nil dicit in this behalf rendered in favor of said plaintiffs against said defendant at a previous day of the present term of this court is hereby set aside.

Proceedings had before the Honorable John C. Murray, on Friday, February 29, 1856.

WILLIAM H. GAINES, and MARIA, his wife, Albert Belding, Henry Belding, and George Belding, Plaintiffs,
vs.
JACOB SWEIPTZER, Defendant.
} 157—Ejectment.

On this day come the said parties by their respective attorneys, and the said defendant enters his plea of not guilty herein; to which the plaintiffs join issue all in short by consent upon the record, and thereupon come a jury, to wit: Samuel F. Gentry, Isham J. Ready, Andrew P. Sanders, Reuben Grant, Renjamin C. Tyler, Thomas Barton, DeKalb Fulton, Jesse Moore, Wiley A. Ward, Armstead Jordan, Tilghman H. Cloud, Nicholas Miller, twelve good and lawful men of the county of Hot Spring, who being duly elected, empanelled, and sworn well and truly to try the issue joined herein, and a true verdict render according to the evidence, who having heard the evidence adduced, the arguments of counsel, and the instructions of the court, returned into court here the following verdict, to wit: "We, the jury, find for the plaintiffs on the issue joined, and assess the plaintiff's damages to the sum of one cent.

"WILEY A. WARD, *Foreman.*"

It is therefore considered by the court that the said plaintiffs do have and recover of and from the said defendant as well the land and premises described in said declaration, being all that part of a certain tract or parcel of land designated on the public surveys as the southwest quarter of section thirty-three, in township two south, range nineteen west, which is included in a certain lot or enclosure lying and being on the left-hand side of the road going through the Hot Spring valley in a southern direction, and which lot adjoins on its upper or northern side the lot or enclosure occupied by Samuel Macklin and Oney Macklin, and the property on the lower or southern side thereof being vacant or unenclosed, and the sum of one cent for their damages so as aforesaid assessed by the jury in this behalf expended to be taxed, &c. It is ordered that said plaintiffs do have execution hereof, by writ of possession, for said land and premises, with command to levy and collect the damages and costs aforesaid.

Pending the trial of this cause, the defendant excepted to sundry decisions of the court, and asked and obtained leave until a future day of this term to prepare and tender his bill of exceptions in respect thereof.

Proceedings had before the Honorable John C. Murray, on the first day of March, (Saturday,) 1856, it being a subsequent day of the aforementioned term of said court.

Bill of Exceptions.

WILLIAM H. GAINES and others
vs.
JACOB SWEEPTZER. } 157—Ejectment.

Came again the parties by attorney, and on the leave granted the defendant tenders his bill of exceptions, which is signed, sealed, and ordered of record herein.

In the Circuit Court of said county, at Feb. term thereof, 1856.

WILLIAM H. GAINES et al.
vs.
JACOB SWEEPTZER. } In Ejectment.

Be it remembered that on this 29th day of February, 1856, and during the present term of the court, the above entitled cause coming on for trial, and after the jury were sworn, the plaintiffs, to support their title, offered to read in evidence, after having first proven that the certificates and signatures of the register and receiver thereto were genuine, which are in the words and figures following, to wit:

Receiver's Rec't.

No. 6,545—Receiver's Receipt.

RECEIVER'S OFFICE AT WASHINGTON, ARKANSAS,
December 19, 1851.

Received from Maria Gaines, (wife of William H. Gaines, form-

erly Maria Belding,) Albert Belding, Henry Belding, and George Belding, the heirs and legal representatives of Ludovicus Belding, deceased, of Hot Spring county, in the State of Arkansas, the sum of two hundred dollars in full for the southwest quarter of section thirty three, (33,) in township two (2) south, of range nineteen west, containing one hundred and sixty acres, (160,) according to the return of the surveyor general, at $1 25 per acre.

Bill of Ex.

According to instructions, I note that this entry interferes with the New Madrid location of Francis Langlor's on the same lands, and also that it embraces lands directed to be reserved by the act of Congress of 20 April, 1832, and is only permitted to be made under the decision of the Secretary of the Interior, under date of November 21, 1851, and the instructions of the Commissioner of the General Land Office, under date of November 25, 1851, in accordance with said decision.

B. F. HEMPSTEAD, *Receiver.*

Com'r to Reg. and Rec.

Register's Transcript.

GENERAL LAND OFFICE, *November* 25, 1851.

GENTLEMEN: The papers accompanying your letters of the 18th and 24th March last, in reference to the claim to the Hot Springs, in Arkansas, having been submitted to the Secretary of the Interior for his action on the legal point in the case, to wit: the reservation of the land by Congress, they were returned to this office for its decision on the respective merits of the pre-emption claim irrespective of this question.

On the 26th of August last, this office returned the papers with its decision adverse to the claim of John Percifull, and in favor of that of the heirs of Ludovicus Belding, it agreeing with you both as to the establishment of the facts of cultivation in 1829, and possession on the 29th of May, 1830, and regarding the objections of the receiver founded upon the opinion that those acts were performed as the tenant of another as not affecting the validity of the claim.

On the 14th ulto. this office received the opinion and decision of the Secretary of the Interior, dated the 10th of that month, in which he sustained the existing validity of the act of 20th April, 1832, it not having been repealed or affected by any subsequent law, and that therefore none of the claims preferred for this land are of any legality.

On the said 14th ult. an application was made by the attorney of the heirs of Belding for permission to make an entry of said claim, "in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts," stating that, of course, under the decision of the Secretary, they should not ask

for a patent. This was refused by this office, and an appeal from that action taken to the Secretary of the Interior, who, on the 21st inst., addressed to this office a letter, *of* copy of which is herewith enclosed.

In accordance with the direction of the Secretary therein contained, you are instructed to permit the "heirs of Ludovicus Belding" to make payment for the southwest quarter of section 33, township 2 south, range 19 west, as containing 160 acres; and in addition to the ordinary entry thereof upon your books, and the return to this office, you will note the fact of its interference with the New Madrid location of Langlois, of its embracing land directed to be reserved by act of 20th April, 1832, and that said entry is permitted under the Secretary's decision of the 21st November, 1851.

Similar annotations will be made on the receiver's receipt and the register's certificate.

Respectfully, your obedient servant,

J. BUTTERFIELD.

REGISTER AND RECEIVER,
Washington, Arkansas.

Sect. Int. to Com'r.

(Copy.)

DEPARTMENT OF THE INTERIOR,
Washington, Nov. 21st, 1851.

SIR: Upon consultation with the Attorney General, and after full consideration of the application of A. H. Lawrence, esq., attorney for the heirs of Ludovicus Belding, one of the claimants to the Hot Springs of Arkansas, on appeal from your decision of the 15th ultimo against permitting said heirs to make an entry under the acts of 29th May, 1830, and 14 July, 1832, I have concluded that it will be proper, and in accordance with precedent, to permit them to do so, and you will therefore instruct the register and receiver accordingly; said entry will remain subject to the same power and revision and control by the General Land Office and this Department as may be lawfully exercised over any ordinary entry.

The government will still hold the ultimate power of protecting its own rights, while the claimants will be placed in a position to contest the adverse claims of others to the same lands.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

No. 6,545. LAND OFFICE, WASHINGTON, ARKANSAS,
December 19th, 1851.

We, Maria Gaines, (wife of William H. Gaines, late Maria Beld-

ing,) Albert Belding, Henry Belding, and Gorge Belding, heirs and legal representatives of Ludovicus Belding, deceased, of Hot Spring county, Arkansas, do hereby apply to purchase the southwest quarter of section thirty-three (33), in township two (2) south, of range nineteen (19) west, as containing one hundred and sixty acres, for which we have agreed with the register, acting under instructions from the Commissioner of the General Land Office, bearing date 25th November, 1851, to give at the rate of one dollar and twenty-five cents per acre.

A. BELDING,
MARIA GAINES,
HENRY BELDING,
GEORGE BELDING.

Note.—In accordance with instructions, I note the interference of this entry with the New Madrid location of Langlois, of its embracing land directed to be reserved by the act of 20th April, 1832; and that the entry is permitted to be made under the decision of the Secretary of the 21st of November, 1851, transmitted to this office by the Commissioner of the General Land Office under date of 21st November, 1851.

W. H. ETTER, *Register.*

I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the foregoing pages contain a true copy of the letters received from the Commissioner of the General Land Office, the application filed, *the* and the annotation on the tract-book made under said instructions.

W. H. ETTER, *Register.*

To the reading of which in evidence the defendant at the time objected; but the court overruled said objection, and permitted the same to be read in evidence; to which opinion and ruling of the court the defendant at the time excepted, and asked and obtained time to file his bill of exceptions at a future day of the present term. The plaintiffs then proved the intermarriage of William H. Gaines to Maria Belding before the institution of this suit, and that the defendant was in possession of the premises described in the second count of the declaration.

The plaintiffs upon their part here closed.

Whereupon the defendant offered to prove that he was a settler upon said quarter section of land as government land, and owned the improvement thereon, and was in possession thereof prior to the date of the certificate under which the plaintiffs claim; that the ancestor of the plaintiffs did not occupy said quarter of land on 29th of May, 1830; that said defendant has been in possession of the premises for years. To this evidence plaintiffs objected, and the court sustained the objection, and rejected and refused to allow the said testimony; to which opinion and ruling of the court the

defendant at the time excepted, and asked and obtained time to file his bill of exceptions at a future day of the term.

This being all the testimony introduced or offered by the plaintiffs or defendant, whereupon the plaintiffs prayed the court to instruct the jury as follows, to wit:

Plaintiffs' Ins. given.

GAINES et al.
vs.
JACOB SWEIPTZER.

The plantiffs asked the court to instruct the jury—

1st. That the certificate offered and read in evidence by the plaintiffs *are* sufficient in law to enable them to maintain this action.

2d. That if the jury believe from the evidence that the defendant was in possession of the premises mentioned in the declaration at the time of the commencement of this action, they ought to find for the plaintiffs.

3d. That if the plaintiffs are entitled to recover, by way of damages, the rents and profits of said premises from the time of the commencement of this suit down to the present time, according as the jury shall find, the value of such rents and profits from the evidence adduced before them.

WATKINS & GALLAGHER,
Att'ys for Pl'ffs.

To which instruction the defendant at the time objected, but the court overruled said objection, and gave said instructions, and each and every of them; to which opinion and ruling of the court the defendant at the time excepted, and asked and obtained time to file his bill of exceptions at a future day of the present term.

Defendant's Inst. refused.

The defendant then prayed the court to instruct the jury as follows, to wit:

1st. If the jury believe from the evidence that the defendant is occupant and owner of an improvement upon the land of the United States, and that the premises in suit are such, they must find for defendant.

WILLIAMS & WILLIAMS.

To the giving of which instructions plaintiffs at the time objected, and the court sustained said objection, and refused to give said instructions; to which ruling and opinion of the court the defendant at the time excepted, and asked and obtained time to file his bill of exceptions during the present term of this court.

And now, on this 1st day of March, A. D. 1856, it being during the present term of this court, and before said special judge in court, in order to save and preserve the testimony and exceptions, points and questions aforesaid, brings here into court his bill of exceptions, and prays that the same may be signed, sealed, and made a

part of the record herein—time have been given him until now to prepare the same—which accordingly done.

Witness my hand and seal, as judge, this 1st day of March, 1856.

J. C. MURRAY, [SEAL.]
Special Judge.

The defendant prays an appeal to the Supreme Court, and the plaintiffs waive the necessity of affidavit. Said appeal is granted.

On motion, the plaintiffs waive the necessity of more than one security.

On motion, and by consent, it is ordered that said Sweeptzer have leave to enter into recognizance with Thomas D. Harris, his security, in the sum of one hundred and twenty-five dollars, to be levied of their goods and chattels, lands and tenements; to be void upon condition that said Sweeptzer will prosecute his appeal with due diligence to a decision in the Supreme Court, and that, if the judgment appealed from is affirmed, or his appeal dismissed, he will pay whatever of debt, damages, and costs have been recovered against him by the judgment of the circuit court, together with the interest that shall accrue thereon, or that he will otherwise perform the judgment of the circuit court; and that he will also pay the costs and damages that may be adjudged against him in the Supreme Court upon his appeal; else to remain in full force and virtue.

STATE OF ARKANSAS,
County of Hot Spring.

I, Jno. P. Emerson, clerk of the circuit court within and for said county, do hereby certify that the foregoing twenty-one pages, exclusive, contain a true, perfect, and complete transcript of the cause therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Rockport, on this 8th day of April, A. D. 1856. [L. S.]

JNO. P. EMERSON, *Clerk.*

Pro. in Sup. Court.

And afterwards, to wit, at a supreme court of said State, begun and held at the court-house in the city of Little Rock, on the first Monday, being the 7th day of July, A. D. 1856, were the following proceedings on said day:

At this day comes the said appellant by attorney, and, on motion, it is ordered that his assignment of errors be filed; and thereupon the same is filed.

Which said assignment of errors is as follows:

Ass't of Errors.

Comes the said plaintiff and says, that in the proceedings and

judgment of the circuit court of Hot Spring county in this case there is manifest error, in this, that said case was tried before a special judge, to wit, John C. Murray, when the said case is not in the special commission of said Murray, and said judge had no right to try the same.

2d. The court erred in permitting testimony to go to the jury upon the part of the plaintiffs, which was illegal, irrelevant, and incompetent against the objection of said defendant.

3d. The court erred in refusing to permit plaintiff to introduce and give to the jury evidence upon the part of plaintiff, which was legal, relevant, and competent.

4th. The court erred in giving the instructions to the jury asked by said defendant, and in refusing to give the instructions asked by said plaintiff.

5. And the judgment is for plaintiff, when, by law, it should be for defendant; and this the said plaintiff is ready to verify. For these and other errors apparent upon the face of the record, he prays that said judgment be reversed.

WILLIAMS & WILLIAMS,
Attorneys for Pl'ff.

And afterwards, to wit, on the 20th day of October of said term, were the following proceedings:

At this day come the said appellees, by their attorney, and, on motion, it is ordered that their joinder in errors be filed; and thereupon the same is filed.

And at the same time comes said appellant, by his attorney, and this cause is submitted on the briefs filed, and by the court taken under advisement.

Said joinder in errors is in the following words:

Joinder in Errors.

Come the said appellees, by their attorneys, and say, that in the record of the proceedings aforesaid, and in the judgment aforesaid, in manner and form as herein rendered, there is no error; wherefore they pray that said judgment may be in all respects affirmed.

WATKINS & GALLAGHER,
Atty's for Appellees.

And afterwards, to wit, on the 1st day of August, A. D. 1857, at said term of our supreme court, held as aforesaid, to which term this cause was continued by operation of law, were the following proceedings, to wit:

This cause came on to be heard upon the transcript of the record of the circuit court of Hot Spring county, and was argued by counsel; on consideration whereof, it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause. It is therefore considered by the court, that

the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things, affirmed with costs. It is further considered, that said appellees recover of said appellant all their costs in this court in this cause expended, and have execution thereof.

And afterwards, to wit, on the 8th day of August, A. D. 1857, the said appellant presented to the clerk of said supreme court a writ of error issued by the clerk of the circuit court of the United States for the eastern district of Arkansas, and allowed by the chief justice of our said supreme court, to remove said cause to the Supreme Court of the United States, and at the same time filed in the office of the said clerk a copy of said writ, which, with its endorsement, is in the following words:

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

The President of the United States to the honorable the Judges of the Supreme Court of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in a certain action of ejectment, which is in the said supreme court before you, between Jacob Sweiptzer, plaintiff, and Wm. H. Gaines, Maria Gaines his wife, formerly Maria Belding, Henry Belding, Albert Belding and George Belding, heirs of Ludovicus Belding, deceased, defendants, manifest error has intervened, as is alleged, to the great damage of the said plaintiff, as by his said complaint appears, and we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, in all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city on the first Monday of December, A. D. 1857, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be done therein to correct that error, what of right and according to the laws of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 7th day of August, A. D. 1857, and the seal of the circuit court of the United States for the eastern district of Arkansas.

[SEAL.]

Attest: WM. FIELD, *Clerk.*

(*Endorsed:*)

Jacob Sweiptzer vs. Wm. H. Gaines and Maria Gaines his wife, Albert Belding, Henry Belding and George Belding, heirs of Ludovicus Belding, deceased.

Copy of writ of error in the above entitled cause lodg. with the clerk of the supreme court of Arkansas for the above named defendants, pursuant to the statute of the United States in such case made and provided.

WILLIAMS & WILLIAMS,
Att'ys for Plaintiff in Error.

And at the same time said plaintiffs in error filed their bond in error, which is in the following words:

Bond in Error.

Supreme Court of the United States.

JACOB SWEIPTZER, in error,
vs.
WILLIAM H. GAINES and MARIA, his wife, Albert Belding, Henry Belding and George Belding, heirs of Ludovicus Belding, deceased.

Know all men by these presents, that we, Jacob Sweiptzer as principal, and Henry Fisher and John Keeler as securities, are held and firmly bound unto the above named William H. Gaines, Maria Gaines his wife, Albert Belding, Henry Belding and George Belding, in the sum of two hundred dollars, to be paid to the said William H. Gaines, Maria Gaines his wife, Albert Belding, Henry Belding and George Belding, their executors or administrators; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated 7th August, 1857.

Whereas the above named Jacob Sweiptzer hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the supreme court of the State of Arkansas: Now, therefore, the condition of this obligation is such, that if the above named Jacob Sweiptzer shall prosecute his writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

J. SCHWEITZER. [SEAL.]
HENRY FISHER. [SEAL.]
JOHN KEELER. [SEAL.]

Sealed and delivered in the presence of—

Approved Aug. 7, 1857.

E. H. ENGLISH,
Ch. J. Sup. Ct. Ark.

In testimony that the foregoing twenty-one pages contain a full, true and complete transcript of the record and proceedings of said

786.

supreme court in said cause, except the opinion of the court delivered therein and the briefs therein filed—

I, Luke E. Barber, clerk of said supreme court, have herto set my hand and affixed the seal of said court at my office
[L. S.] in the city of Little Rock, State of Arkansas, this 12th day of November, A. D. 1857.

L. E. BARBER, *Clerk.*

Filed 14th December, 1857.

Copy of writ of error in the above entitled cause lodg. with the clerk of the supreme court of Arkansas for the above named defendants, pursuant to the statute of the United States in such case made and provided.

WILLIAMS & WILLIAMS,
Att'ys for Plaintiff in Error.

And at the same time said plaintiffs in error filed their bond in error, which is in the following words:

Bond in Error.

Supreme Court of the United States.

JACOB SWEIPTZER, in error,
vs.
WILLIAM H. GAINES and MARIA, his wife, Albert Belding, Henry Belding and George Belding, heirs of Ludovicus Belding, deceased.

Know all men by these presents, that we, Jacob Sweiptzer as principal, and Henry Fisher and John Keeler as securities, are held and firmly bound unto the above named William H. Gaines, Maria Gaines his wife, Albert Belding, Henry Belding and George Belding, in the sum of two hundred dollars, to be paid to the said William H. Gaines, Maria Gaines his wife, Albert Belding, Henry Belding and George Belding, their executors or administrators; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated 7th August, 1857.

Whereas the above named Jacob Sweiptzer hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the supreme court of the State of Arkansas: Now, therefore, the condition of this obligation is such, that if the above named Jacob Sweiptzer shall prosecute his writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

J. SCHWEITZER. [SEAL.]
HENRY FISHER. [SEAL.]
JOHN KEELER. [SEAL.]

Sealed and delivered in the presence of—

Approved Aug. 7, 1857.

E. H. ENGLISH,
Ch. J. Sup. Ct. Ark.

In testimony that the foregoing twenty-one pages contain a full, true and complete transcript of the record and proceedings of said

786.

supreme court in said cause, except the opinion of the court delivered therein and the briefs therein filed—

I, Luke E. Barber, clerk of said supreme court, have herto set my hand and affixed the seal of said court at my office [L. S.] in the city of Little Rock, State of Arkansas, this 12th day of November, A. D. 1857.

L. E. BARBER, *Clerk.*

Filed 14th December, 1857.